

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

EDUCATIONAL TESTING SERVICE,

Plaintiff,

-against-

EDUCATION TRAINING SPECIALISTS,
LLC d/b/a ETS and WENDY W. WYLIE,

Defendants.

Civil Action No. 3:09-cv-170

Judge Whitney

CONSENT JUDGMENT

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, with the consent of the plaintiff and defendants Education Training Specialists, LLC and Wendy W. Wylie (collectively, the "Defendants"), that:

1. This Court has jurisdiction over the plaintiff and the Defendants and over the subject matter of this action.
2. Plaintiff filed a Complaint on April 22, 2008.
3. Plaintiff owns U.S. Patent and Trademark Office Registration No. 1,166,461 for the mark "ETS."
4. Plaintiff owns U.S. Patent and Trademark Office Registration No. 2,363,333 for the following mark:



(the "ETS Logo").

5. Plaintiff owns U.S. Patent and Trademark Office Application Serial No. 77/711,434 and common-law rights for the following mark:



(the "ETS Logo").

6. Defendant Wendy W. Wylie wholly-owns and completely controls defendant Education Training Specialists, LLC, and is authorized to sign this Consent Judgment on behalf of, and to bind, defendant Education Training Specialists, LLC.

7. Defendants are using and defendant Education Training Specialists, LLC has applied to register as a federal trademark in the U.S. Patent and Trademark Office under Application Serial No. 77/545,966 filed August 13, 2008 the following mark:



The SMART Solution

Several Measures of the ETS Assessment of Reading and Mathematics

("Defendants' Mark")

for educational products and services, which application plaintiff has opposed under Opposition No. 91,189,750.

8. The plaintiff and the Defendants have agreed to resolve plaintiff's claims in this action on the terms and conditions set forth below, have consented to entry of this Consent Judgment, and have expressly waived any and all rights to appeal this Consent Judgment.

IT IS THEREFORE FURTHER ORDERED, ADJUDGED AND DECREED that:

1. No later than the sixtieth (60th) day after the entry of this Consent Judgment, the Defendants, their officers, agents, corporate or entity affiliates related through common ownership or control, servants, employees, agents, attorneys, heirs, executors, administrators, successors and assigns, and all persons or entities acting in concert or participation with them or any of them, shall permanently cease, and are hereby permanently enjoined, from the offering for sale, sale, advertising, promotion or rendering of any educational training or consulting services or products, or any products or services relating thereto using:
 - (a) "ETS" as a trade name, abbreviation of a business title, trademark or service mark; (b) the ETS Logo; and (c) any word, design or designation similar or

confusingly similar to the ETS Logo or any distinctive feature of the ETS Logo, including, without limitation, the logo



("Defendants' Imitative Logo")

which is the trademark/ service mark sought to be registered by defendant Education Training Specialists, LLC in the United States Patent and Trademark Office under Application Serial No. 77/545,966 or (d) any other false designation of origin or false description or representation or any other thing calculated or likely to cause confusion or mistake in the mind of the trade or public or to deceive the trade or public into believing that the Defendants' businesses, products or services are in any way authorized, sponsored or approved by or otherwise affiliated with plaintiff.

2. The Defendants, their officers, agents, corporate or entity affiliates related through common ownership or control, servants, employees, agents, attorneys, heirs, executors, administrators, successors and assigns, and all persons or entities acting in concert or participation with them or any of them, are hereby permanently enjoined from prosecuting Application Serial No. 77/545,966 and from applying to register or registering in the U.S. Patent and Trademark Office,

or any other domestic or foreign trademark authority, any mark that incorporates "ETS" or the ETS Logo or Defendants' Imitative Logo or any other mark, design or combination of words and designs or letters and designs that are similar or confusingly similar to the ETS trademark, and/or the ETS Logo that copies or features any distinctive feature of the ETS Logo, including, without limitation, the display in any fashion of elliptical swooshes surrounding the acronym "ETS" or any designation confusingly similar thereto.

3. On or before the sixtieth day (60th) after the entry of this Consent Judgment, the Defendants shall cause the following to be destroyed, or altered in such a way as to obliterate all references to, or visibility of, "ETS," the Defendants' Imitative Logo or anything similar or confusingly similar to the ETS trademark and/or the ETS Logo or any distinctive feature of the ETS Logo, including, without limitation, the depiction or rendering in any fashion of elliptical swooshes in black and white or maroon and blue or any other colors or color combination surrounding an acronym which is confusingly similar to "ETS; and any and all merchandise, reports, signage, website contents, printed materials, marketing materials, business documents, contract forms, advertising and other materials in their possession or under their control, whether in their physical possession, or in the possession of their employees, agents, officers, directors, and all persons acting in concert or participation with them, whether in hard copy, electronic or any other format, and whether at defendant Education Training Specialists, LLC's business location or otherwise that bear any trade name, business name, trademark, Internet domain name, email address or other

designation specified in paragraph 1 hereof, or which otherwise is in violation of plaintiff's rights as decreed herein, provided, however, that Defendants may continue to use until August 9, 2009 (the "Domain Name Cessation Date"), the Internet domain name educationtrainingspecialists.com as a redirecting link only, without providing any content otherwise violative of this Consent Judgment, which links to Defendants' new Internet website,

www.educationmisconductsolutions.com. The domain name

educationmisconductsolutions.com and the Internet website

www.educationmisconductsolutions.com shall become the domain name and

Internet website for Defendants' business no later than May 9, 2009. By the

Domain Name Cessation Date, Defendants will take all steps necessary to render a transfer of the domain name educationtrainingspecialists.com to Plaintiff.

4. No later than the sixtieth (60th) day after the entry of this Consent Judgment, the Defendants shall change the name of defendant Education Training Specialists, LLC to a name that does not abbreviate to the acronym "ETS" or any variation of that name or anything similar or confusingly similar to that name, and the Defendants, their officers, agents, corporate or entity affiliates related through common ownership or control, servants, employees, agents, attorneys, heirs, executors, administrators, successors and assigns, and all persons or entities acting in concert or participation with them or any of them, shall permanently cease, and are hereby permanently enjoined, from using as a corporate, entity or business name "Education Training Specialists," or any corporate entity or business name which abbreviates to the acronym "ETS," such as by virtue of the

fact that those letters are the first letters in each word comprising the name of defendant Education Training Specialist, LLC, or any variation of that name or anything similar or confusingly similar to that name, or any name calculated or likely to cause confusion or mistake in the mind of the trade or public or to deceive the trade or public into believing that the Defendants' companies, businesses, products or services are in any way authorized, sponsored or approved by or otherwise affiliated with plaintiff.

5. All claims, counterclaims and defenses which are or which could have been asserted by the plaintiff or the Defendants or either of them based on the facts alleged in the Complaint or facts known to such party relating to the subject matter thereof as of the date of entry of this Consent Judgment are hereby resolved and merged into this Consent Judgment.

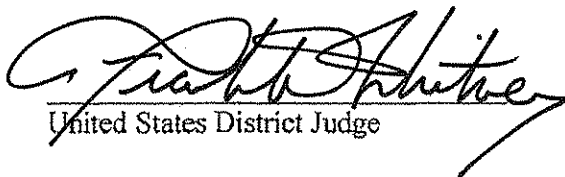
6. This Consent Judgment shall bind the plaintiff and the Defendants and their respective officers, agents, corporate or entity affiliates related through common ownership or control, servants, employees, agents, attorneys, heirs, executors, administrators, successors and assigns, and all persons or entities acting in concert or participation with them or any of them.

7. This Court shall retain jurisdiction over this matter for the purpose of enforcing this Consent Judgment.

8. In the event Defendants are or either of them is found to be in violation of any of the provisions of this Consent Judgment, Defendants shall be liable to plaintiff for plaintiff's attorneys fees and costs incurred in the enforcement hereof.

Dated May 18, 2009

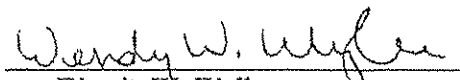
SO ORDERED:


United States District Judge

The undersigned hereby CONSENTS to the entry of final judgment in the form attached herein or otherwise approved by the Court.

APPROVED AND CONSENTED TO BY:


EDUCATION TRAINING SPECIALISTS, LLC


Wendy W. Wylie

By: Wendy W. Wylie
Name: Wendy W. Wylie
Title: Owner

Approved as to form by:

ALSTON & BIRD LLP

By: 
A Member of the Firm
101 S. Tryon Street
Suite 4000
Charlotte, NC 28280-4000
(704) 444-1000

*Attorneys for Plaintiff
Educational Testing Service*

Of Counsel:

DORSEY & WHITNEY LLP
250 Park Avenue
New York NY 10177
(212) 415-9200